

# ECO ENTERPRISE MASTER SERVICE AGREEMENT

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## 1 Terms.

The terms and conditions in this Master Service Agreement shall be binding between 46 Labs and Customer upon submission of any 46 Labs Eco Service Order, and together with the terms and conditions in each service order, any supplemental terms and conditions, including exhibits and Service Level Agreements, Service Support Agreements, 46 Labs' Acceptable Use Policy and Privacy Policy, which are incorporated herein and comprise Customer's agreement with 46 Labs. This Agreement represents the entire agreement between the Parties and supersedes and merges all prior offers, agreements, promises, understandings, statements, representations, warranties, indemnities and inducements to the making of this Agreement relied upon by either party, whether written or oral, between or among Customer and 46 Labs as well as 46 Labs' agents, employees, or sales persons. In the event of an inconsistency between these documents, the conditions of the documents listed below shall control in the following order of precedence:

- 1.1 Any mutually agreed upon Service Order or amendment or addendum thereto, properly executed by authorized representatives of both 46 Labs and Customer;
- 1.2 Applicable supplemental terms and conditions, including the Service Level Agreements, Support Service Agreements and exhibits to this MSA;
- 1.3 This Master Service Agreement; and
- 1.4 The Acceptable Use Policy and Privacy Policy.

THIS MSA, ALL SOs, SLA, SSA, ANY SUPPLEMENTAL PRODUCT TERMS AND CONDITIONS, AND 46 LABS' AUP, FUP, AND PRIVACY POLICY ARE LOCATED ON A WEBSITE ACCESSIBLE AT ALL TIMES BY CUSTOMER AND MAY BE MODIFIED BY 46 LABS AT ANY TIME. FOR CHANGES TO ANY OF THE AFOREMENTIONED COMPONENTS OF THE AGREEMENT, 46 LABS WILL NOTIFY CUSTOMER OF ANY MATERIAL CHANGES IN THE AGREEMENT PRIOR TO THE BILLING PERIOD IN WHICH THE CHANGES WOULD GO INTO EFFECT. NOTIFICATION OF ANY SURCHARGE MAY BE IN THE FORM OF AN INVOICE INSERT OR BY A MESSAGE WITHIN CUSTOMER'S INVOICE; BY POSTCARD OR LETTER; BY 46 LABS' CALLING AND SPEAKING TO CUSTOMER OR LEAVING A MESSAGE FOR CUSTOMER; BY POSTINGS ON 46 LABS' WEBSITE AT [WWW.46LABS.COM/SERVICE-TERMS/](http://WWW.46LABS.COM/SERVICE-TERMS/); OR BY EMAIL. CUSTOMER SHALL BE BOUND BY CHANGES IMMEDIATELY AFTER THEY BECOME EFFECTIVE. CUSTOMER ACCEPTS THE INCORPORATION INTO THE AGREEMENT OF SUPPLEMENTAL PRODUCT TERMS AND CONDITIONS, THE TERMS AND CONDITIONS IN THIS MSA, AUP AND PRIVACY POLICY, AND ALL MODIFICATIONS MADE THERETO.

## 2 Definitions.

- 2.1 "46 Labs" shall mean 46 Labs Communications, its subsidiaries and affiliate companies.
- 2.2 "Agreement" shall mean and refer to the collective agreements between the parties including the AUP, FUP, MSA, PP, SLA, SSA, and all associated SOs.

- 2.3 “ANI” is automatic number identification and shall refer to the feature or process for automatically determining the origination telephone number on toll calls for billing purposes.
- 2.4 “AUP” refers to and means 46 Labs’ Acceptable Use Policy available at [www.46labs.com/service-terms/](http://www.46labs.com/service-terms/).
- 2.5 “Billing Disputes” shall be as described in Section 7.
- 2.6 “Broadband Usage Charge” or “BUC” shall mean fees for measured broadband services that are based on Customer’s utilization of the service. For purposes of this fee is calculated on a 95<sup>th</sup> percentile of the peak usage during the prior month. Usage is determined by taking inbound and outbound utilization samples every five (5) minutes during the billing period and retaining the higher of the two samples. Thereafter the highest five percent (5%) of the samples are dropped and the remaining high number is the peak usage.
- 2.7 “BTN” shall mean billing telephone number, the number utilized for the purposes of establishing locational jurisdiction.
- 2.8 “Circuit Ready Date” shall mean the date the Customer’s circuit is active, as notified by the underlying provider.
- 2.9 “Circuit Start Date” shall mean shall be the earliest of (a) the Customer’s first use of the Service, (b) five (5) business days after Circuit Ready Date, regardless of whether all Services have been turned up and regardless of Customer readiness, or (c) five (5) business days after the start of a Customer Delay of Circuit Installation.
- 2.10 “Circuit Services” shall mean the subset of 46 Labs provided Services including for example: fiber ethernet, ethernet over copper, ethernet over coax, ethernet over dsl, broadband, wireless, satellite, fast ethernet, gigabit ethernet.
- 2.11 “Confidential Information” shall mean and include 46 Labs pricing, trade secrets as defined under applicable law, and any and all information, whether provided in writing, orally, visually, electronically or by other means, whether or not marked as “confidential” or “proprietary,” related to the Services and/or business of 46 Labs, including, but not limited to, the terms and conditions of the Agreement. Confidential Information shall not include information (a) already lawfully known to or independently developed by Customer as evidenced by its written records, (b) disclosed in published materials, (c) generally known to the public, or (d) lawfully obtained from third parties without any obligation of confidentiality.
- 2.12 “CPN” is the calling party number and shall refer the person or device that initiates a telephone call.
- 2.13 “Credit Card Surcharge” shall mean the three percent (3%) surcharge applied to the total amount paid by Customer that makes payment by credit card following approval by 46 Labs.
- 2.14 “Customer” shall be the party using the Service as further described in an accompanying SO.
- 2.15 “Customer Delay of Circuit Installation” shall mean:  
(a) an occurrence of Customer directly or indirectly delaying or impeding 46 Lab’ underlying provider from installing or testing Customer’s access circuit. (b) Customer site

is not ready to accept circuit services after scheduling, or (c) if the Customer's employees, contractors, supplies, vendors, agents, assigns, property owner, property manager, or landlord does not allow, blocks, or delays 46 Labs' or the underlying provider from installing or testing the access to the circuit.

- 2.16 "Customer Provided Equipment" or "CPE" shall mean software, hardware, or equipment purchased or supplied by Customer for the performance of the Services.
- 2.17 "Demarc Extension" shall mean the point where the public switched telephone network ends and connects to the customer's on premises wiring.
- 2.18 "DID" or "Direct Inward Dialing" shall mean the feature that provides service for multiple telephone numbers over one or more analog or digital physical circuits to a private branch exchange.
- 2.19 "Early Termination Liability" or "ETL" shall mean the Customer's liability in the event of a termination of this any service provided under this Agreement prior to the current Service Order Term for the service and shall be equal to the average amount of the total fees for any and all cancelled services for the prior three (3) months multiplied times the number of months remaining in the applicable Term for the services cancelled.
- 2.20 "Excessive Call Attempt Surcharge" shall mean the fee for excessive call attempts, excessive outbound incomplete calls or excessive incomplete toll-free calls as further defined in Section 5.2.1.4.
- 2.21 "FUP" or "Fair Use Policy" shall mean and refer to 46 Labs' Enterprise Fair Use Policy available for review at [www.46labs.com/service-terms/](http://www.46labs.com/service-terms/).
- 2.22 "Indemnified Party" shall mean the party to this Agreement seeking Indemnification under Section 11 by reason of having a claim made against it.
- 2.23 "Indemnifying Party" shall mean the party responsible for providing indemnification under Section 11.
- 2.24 "Invalid Numbers" shall mean numbers that are currently not active or not in service.
- 2.25 "LATA" shall refer to the three- or five-digit code that labels a particular geographic market in which calls are routed local access transport areas.
- 2.26 "Letter or Authorization" or "LOA" shall mean letter of authorization for the ability to port telephone numbers between regulated carriers as described in an applicable SO.
- 2.27 "Local Exchange Carrier" or "LEC" shall mean local telephone company as that term is understood under U.S. regulations for telecommunications.
- 2.28 "Local Number Portability" or "LNP" shall refer to the Local Number Portability database maintained on behalf of the telecommunications industry by NPAC.
- 2.29 "Local Toll Call" shall mean a telephone call that terminates within a LATA in which the Customer is located, but outside of the Customer's exchange.
- 2.30 "Local Voice Calls" shall mean a telephone call that both originates and terminates within the Customer's exchange.
- 2.31 "Minimum Point of Entry" or "MPOE" shall mean and refer to the closest practical point where the telecommunications service carrier's cables cross the property line or enter the building of the Customer.
- 2.32 "Monthly Recurring Charge" or "MRC" shall mean fees for Services that are fixed in amount and not dependent on usage as described the applicable SO.

- 2.33 “Monthly Usage Charge” or “MUC” shall mean fees for services that are variable in amount and are based on Customer usage. Monthly Usage Charges may include a minimum monthly usage fee as described in any associated SO.
- 2.34 “MPLS” shall refer to and mean the multiprotocol label switching technique.
- 2.35 “MSA” shall refer to and mean this Master Service Agreement document.
- 2.36 “NADP” shall mean the countries that are part of the North America dialing plan.
- 2.37 “Non-recurring Charge” or “NRC” shall mean one-time fees for a discrete service as described the applicable SO.
- 2.38 “NPAC” refers to the Number Portability Administration Center for both the United States and Canada.
- 2.39 “NPA/NXX” NPA shall mean Number Plan Area, commonly called Area Code. NXX refers to the three digits of a phone number immediately following the area code known also as the exchange.
- 2.40 “OCN” shall mean the four-character identifier for North American phone companies
- 2.41 “Product” shall mean software, hardware, documentation or equipment supplied by 46 Labs, or a third-party by the direction of 46 Labs, in addition to the Services to the Customer under any SO.
- 2.42 “PP” shall mean and refer to the 46 Labs Privacy Policy available at [www.46labs.com/service-terms/](http://www.46labs.com/service-terms/).
- 2.43 “PSAP” shall mean public service answering point.
- 2.44 “RATES” – shall mean the pricing attached to various monthly, metered, and usage-based services provided by 46 Labs to the Customer.
- 2.45 “Regulatory Change” shall mean to the imposition of new regulations, modifications of existing regulations, new interpretation, application or enforcement of, or exercise of authority related to, any regulation or finding of any federal, state and/or local regulatory agency, legislative body, or a court of competent jurisdiction, including, without limitation, the imposition of any fees, surcharges, and/or taxes in reliance on or as a result of the same
- 2.46 “Service” shall refer to the 46 Labs telecommunication services as further described in this Agreement and any accompanying SO.
- 2.47 “Scheduled Maintenance” shall mean and refer to the 46 labs standard maintenance windows for a specific service as published at [www.46labs.com/service-terms/](http://www.46labs.com/service-terms/).
- 2.48 “SO” or “Service Order” shall mean and refer to any 46 Labs Eco Service Order associated with the Agreement.
- 2.49 “Service Order Term” shall have the meaning and duration as set forth in the associated SO.
- 2.50 “Softphone” shall mean the software installed on an Internet connected device that uses the Internet to make phone calls.
- 2.51 “SLA” shall mean and refer to the service level agreements “SLA – Eco Enterprise Data” and “SLA-Eco Enterprise Voice” available for review at [www.46labs.com/service-terms/](http://www.46labs.com/service-terms/). 46 Labs reserves the right to amend these SLAs from time to time and such amendments shall be effective on notifying the customer and posting the revised SLA to [www.46labs.com/service-terms/](http://www.46labs.com/service-terms/).

- 2.52 SSA shall mean and refer to 46 Labs' Service Support Agreements available for review at [www.46labs.com/service-terms/](http://www.46labs.com/service-terms/).
- 2.53 "Start of Service Date" shall mean the date the Services are available to the Customer for use.
- 2.54 "Tax Exempt Document" shall mean the Customer provided tax-exempt certification.
- 2.55 "Term" shall have the meaning set forth in Section 13.
- 2.56 "TCIA" shall refer to and mean the Truth in Caller ID Act of 2009 and codified under U.S.C. 47 U.S.C § 227.
- 2.57 "TSR" shall refer to and mean the Federal Trade Commission's Telemarketing Sales Rule as codified in U.S. 16 C.F.R 310.
- 2.58 "TCPA" shall refer to and mean the Federal Communication Commission's Telephone Consumer Protection Act as codified under U.S.C. 47 U.S.C § 227.
- 2.59 "VOIP Equipment" shall mean any equipment that encapsulates voice communications into an internet protocol format for the purposes of transmission.

- 3 Service Limitations, Requirements, Start Date, Availability of Facilities.** The Service is offered and furnished subject to the availability, in 46 Labs' sole judgment, of all necessary facilities, including those acquired or leased by 46 Labs from other entities.
- 3.2 Reseller. 46 Labs is acting as a reseller/network provider of certain services, facilities and equipment provided by third parties. 46 Labs may be unable to initiate service due to facilities or other constraints of third parties. Further, 46 Labs cannot guarantee any requested turn up/start of service date or ensure that 46 Labs or its underlying network/facilities providers can achieve any projected turn up/start of service date. Any statement or representation to the contrary shall be deemed null and void.
  - 3.3 Right to Alter Service. In its sole discretion and without liability to Customer, 46 Labs may: (a) alter the methods, processes or suppliers by or through which it provides Service; (b) change the facilities used to provide Service; or (c) substitute comparable Service for that being provided to Customer. If necessary due to the potential impact on affected Customers, 46 Labs will furnish prior notice of any alterations, changes or substitutions.
  - 3.4 46 Labs' Right to Suspend, Terminate, Block, Discontinue, or Surcharge Service Without Notice to Customer.
    - 3.4.1 Fraud, Network Blockage or Degradation, Legal Compliance. 46 Labs may discontinue furnishing Service by blocking traffic to or from certain countries, cities, NXX exchanges, or individual telephones; by blocking call origination; or by blocking calls using certain Customer authorization or access codes; or cancel Customer's account immediately and terminate this Agreement without notice, without 46 Labs incurring any liability whatsoever, if 46 Labs deems that such action is necessary to prevent or protect against fraud, or to otherwise protect 46 Labs' personnel, agents, facilities or services, for reasons which include but are not limited to: (a) violation of 46 Labs' AUP; (b) use or misuse of the Service in a manner that results, or could result, in network blockage or other degradations that adversely affect the Service furnished to Customer or to other existing or prospective customers of 46 Labs; (c) manipulation, change, or in any way modifying traffic line records, including the CPN or ANI; (d) excessive termination to a single central office in excess of that location's termination capacity; (e) sequential

- dialing; (f) call blasting; (g) excessive incomplete calls; (h) improperly formatted SIP messages; (i) uses, or threatens to use any of the Services for any unlawful or fraudulent purpose or otherwise violates the terms of the Agreement; (j) if 46 Labs is ordered or requested to terminate service by a governmental entity (k) a change in law or regulation that financially impairs 46 Labs ability to deliver the service ; a violation of 46 Labs' Fair Use Policy; or (l) for a violation of the TCPA, TSR, Federal Do Not call Rules, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, a violation of the Federal Do Not Call rules, or any other FCC or FTC rule or law applicable to the Service.
- 3.4.2 For Financial Cause. 46 Labs may immediately and at any time terminate the Agreement, discontinue service, cancel an application for service, cancel the Customer's account, or require Customer to deposit funds as security, without incurring any liability, for any of the following reasons: (a) Customer fails to pay any amount owed to 46 Labs when due; (b) Customer's failure to comply with any material term or condition of this Agreement; (c) For usage by Customer beyond any credit limit or prepaid balance limit imposed by 46 Labs; (d) If, in 46 Labs' sole judgment, any aspect of Customer's payment arrangements with 46 Labs appear to be fraudulent, including false or misleading credit information, or Customer's use of a credit card that has been reported as misused or stolen; (e) Customer's ability to pay, or if, in 46 Labs' sole judgment, Customer's payment arrangements with 46 Labs appear to be inadequate to meet any of Customer's obligations to 46 Labs coming due; (f) Customer's filing of any voluntary petition of bankruptcy or the filing of an involuntary petition in the bankruptcy court which names Customer as the debtor; or (g) Customer communicates any intent to breach, or to not comply with the terms of this Agreement, including but not limited to payment for services at then-prevailing rates.
- 3.4.3 Customer Obligation to Pay Through Disconnection Period. Customer shall be responsible for payment of all MRCs through any disconnection period.
- 3.4.4 Service Reconnection Delay. In the event 46 Labs invokes its right to suspend, alter, terminate, disconnect, or any combination thereof for Customer's violation of Section 3.4 and the Customer subsequently resolves the issue, the process of reconnection of the Service may take up to thirty (30) business days.
- 3.5 Regulation and impact on fees. The fees set forth in the Agreement are subject to Regulatory Change. 46 Labs reserves the right, at any time, including retroactively, to do either or both (a) to charge as a pass through to Customer all fees, surcharges or taxes directly or indirectly related to such Regulatory Change or (b) modify the rates and/or terms and conditions of the Agreement to reflect the impact of such Regulatory Change, including, without limitation, the impact of any actions by third parties in connection with such Regulatory Change.
- 3.6 Delivery of Circuit. Unless specifically stated otherwise in a 46 Labs order form, all loop installs are quoted with delivery to the LEC MPOE. Customer is liable for any loop Demarc Extension from the LEC MPOE. Customer is responsible for ensuring that all Demarc Extensions are completed, ordered and approved by the LEC prior to any local loops being dropped by the LEC at Customer's MPOE. In the event Customer fails to complete the Demarc Extension or order appropriate Demarc Extensions prior to the LEC's local loop drop, Customer shall be fully responsible for all associated costs as of the date of

local loop drop. For Ethernet services, the Customer is responsible for ensuring there are adequate facilities at the premises' primary MPOE to receive 46 Labs' service, including power and backboard / rack. The Customer will also be responsible for providing any wiring extension beyond the primary MPOE. Customer will be responsible for any additional unforeseen construction costs including, without limitation, inside wiring administration and special installation costs. 46 Labs' Ethernet Service Installation Guide, which can be found at [www.46labs.com/service-terms/](http://www.46labs.com/service-terms/) identifies the Customer requirements necessary for delivery of Ethernet services to Customer premises. Cancellation fees as set forth in the SO shall be applied in the event Customer has not complied with the requirements in the Ethernet Service Installation Guide, or excessively delays installation. 46 Labs will pass through any costs 46 Labs incurs that are associated with extending wiring beyond the premises' primary MPOE. In the event the Customer chooses not to make the necessary upgrades, the Customer shall nevertheless be responsible for all associated cancellation fees. Where applicable, 46 Labs will deliver Circuit Facilities Assignment ("CFA") at the underlying carrier designated building and suite/cage. It is the Customer's express responsibility to order and pay for all in building local loop circuits or cross-connects required to connect Customer's facilities to the underlying carrier assigned CFA.

- 3.7 Expedited Installation. Customer acknowledges that requests and payments for an expedited installation do not guarantee that any third party will meet a requested installation date. Requests for expedited installation may expedite the process by which Customer's order is serviced, but 46 Labs cannot guarantee that any installation will occur by a specified date. 46 Labs cannot refund any payment made for expedited service in the event that an expedited service date is not met.
- 3.8 Service Availability Notice. The Service is available throughout the Term as described in the SLA, except in the case of Scheduled Maintenance of either or both the 46 Labs' network or its underlying carrier's networks. 46 Labs will use reasonable efforts to provide prior notification via electronic mail to Customer regarding any Scheduled Maintenance of the Service. 46 Labs may interrupt its provision of Service for unscheduled emergency maintenance without notice to Customer or Customer's customers. 46 Labs reserves the right to monitor and/or record certain calls for the purpose of quality control or troubleshooting service issues, subject to state and federal privacy laws.
- 3.9 Valid ANI. Where Customer's equipment allows for manipulation or changing of the outpulsed Automatic Number Identification ("ANI") or calling party number ("CPN"), Customer is required to pass a valid originating ANI or CPN that is owned by the Customer. For purposes of this paragraph, "valid" ANI or CPN shall mean ANI or CPN in an industry standard format that correctly identifies the call as originating from the geographic area where the Customer is physically situated.
- 3.10 900, 500, 700, or Invalid Numbers. Customer shall not pass 900, 500, 700, or invalid numbers (including 000-000-0000 as CPN).
- 3.11 Local Number Portability. Because 46 Labs utilizes the LNP, the number dialed by Customer may return porting information which results in calls terminating to different physical locations, OCNs, or LATAs that may vary from the dialed number. 46 Labs does not provide Customer access to the NPAC database. If (a) the Customer's rate plan does



not include flat-rate pricing, or (b) for the purpose of calculating high cost area surcharges on flat-rate plans, then calls terminating to ported telephone numbers will be rated based on the ported number information, and not the dialed number. Customers wishing to determine whether a dialed number has been ported prior to dialing must arrange independent access to the NPAC database.

- 3.12 OCN Information. All calls billed under plans other than flat-rate plans will utilize OCN information provided by Bellcore or similar database providers. OCN's are determined by criteria including the NPA/NXX of the number dialed, as well as the NPAC database. 46 Labs shall not be liable for the accuracy of any OCN information, which may be utilized by Customer for any purpose, including but not limited to rating, scrubbing or sorting.
  - 3.13 Toll Free Directory Assistance. Upon Customer's written request and to the extent available to 46 Labs, Toll-Free Directory Assistance listing is available for Customer's Toll-Free numbers provided by 46 Labs. Due to the fact that Toll-Free Directory Assistance is provided through an arrangement with a third party, the provision of Toll-Free Directory Assistance by 46 Labs is subject to the policies and procedures promulgated from time to time by such third parties. Customer understands that any Toll-Free Number listed with Toll-Free Directory Assistance is not published in any written directory but is only available on either an online or call-in basis. This service will be charged at such third-party provider's then prevailing rates, which are subject to change without notice at any time.
  - 3.14 International Routes. Customer is aware and acknowledges that 46 Labs has no control over the international routes of its underlying providers. Therefore, 46 Labs cannot assure or guarantee calls/voice quality for all international traffic. Customer agrees that all calls completed will be considered valid and billable, regardless of call quality.
  - 3.15 Blocking of International Calls. If Customer wishes to block International calls, the Customer must ensure that such request is in writing, in the body of the SO for the services for which International blocking is to be applied. Any such blocking request that is not in writing will not be valid. For the purpose of call blocking, "International" refers only to those calls not destined to the United States or Canada. It is the Customer's responsibility to understand the limits on any call blocking functionality. Any request to 46 Labs to unblock international calls must be in writing.
  - 3.16 Internet Services. All Internet services provisioned under this Agreement or any SO are provided as information services, and not as telecommunication services for the purposes of regulation.
  - 3.17 Rights to IP Addresses and Circuits. Customer agrees that IP addresses are not guaranteed, transferable or provided for further distribution. Upon termination of the Agreement, any SO, or cancellation of any Service, all rights to circuits ordered on behalf Customer will revert to 46 Labs, and Customer shall have no rights to the continued use of them regardless of provider. 46 Labs does not represent or warrant that IP Addresses used by Customer in conjunction with the Service will be available to Customer after termination or cancellation.
- 4 911 Services.
    - 4.1 Customer must have at least one 911-enabled DID for each location, with that location's correct address populated in 46 Labs' 911 database, for 911 database services to operate properly for DIDs utilized at that location. For 911 service, the Customer will be required to



register the physical location of Customer's equipment (desk phone, softphone, video phone or mobile phone) with 46 Labs and agree to call 46 Labs customer service to update the location whenever the physical location of service for a particular telephone number changes. Customer may register only one location at a time. IF CUSTOMER DOES NOT UPDATE THE PHYSICAL LOCATION OF CUSTOMER'S EQUIPMENT INCLUDING DESK PHONE, SOFTPHONE, VIDEOPHONE OR MOBILE PHONE, WHEN IT CHANGES, CUSTOMER'S 911 CALLS MAY BE SENT TO AN INCORRECT EMERGENCY CENTER.

- 4.1.1 FOR USERS OF THE 46 Labs KEY SYSTEM TELEPHONES, TO PRESERVE THE ABILITY OF 911 OR E911 PUBLIC SAFETY ANSWERING POINT ("PSAP") PERSONNEL TO RESPOND PROPERLY, CUSTOMER / END USERS OF THE KEY SYSTEM CANNOT MOVE THEIR KEY SYSTEM PHONE TO ANOTHER STREET ADDRESS DIFFERENT FROM THE STREET ADDRESS ASSOCIATED WITH THE REGISTERED ADDRESS FOR SUCH END USER.
- 4.1.2 IT CAN TAKE SEVERAL HOURS TO ACTIVATE 911 SERVICE AT THE UPDATED ADDRESS. WHEN REQUESTED BY 46 Labs, CUSTOMER SHALL TIMELY COOPERATE WITH 46 Labs FOR THE TESTING OF THE 911 SERVICE FOR THE PURPOSE OF ENSURING THE 911 SERVICE IS PROPERLY WORKING. IF CUSTOMER REFUSES OR DELAYS TO COOPERATE WITH 46 Labs FOR SUCH 911 TESTING, 46 Labs GIVES NO ASSURANCE THAT THE 911 SERVICE IS WORKING OR HAS EVER WORKED, AND CUSTOMER SHALL ASSUME FULL AND SOLE LIABILITY IN THE EVENT THE 911 SERVICE FAILS TO WORK PROPERLY. 911 SERVICE WILL NOT FUNCTION IN THE EVENT OF A CUSTOMER PREMISE OR CARRIER SERVICE OUTAGE OR A POWER OUTAGE. NETWORK CONGESTION OR SIGNIFICANT DEGRADATION OF CUSTOMER'S INTERNET ACCESS OR OTHER TYPES OF ACCESS SERVICE MAY DELAY OR PREVENT COMPLETION OF A 911 CALL. THESE CONDITIONS MAY OCCUR REGARDLESS OF THE SIZE OF CUSTOMER'S BANDWIDTH OR THE NUMBER OF CIRCUITS INSTALLED, AND REGARDLESS OF WHETHER OR NOT 46 Labs IS THE PROVIDER. 46 Labs SERVICES (INCLUDING OR NOT LIMITED TO) INTERNET SERVICE AND/OR MANAGED CONNECTIVITY OR LOCAL T1/PRI SERVICE ARE NOT IMMUNE FROM THESE CONDITIONS. 46 Labs STRONGLY RECOMMENDS CUSTOMER AT ALL TIMES MAINTAINS AN ALTERNATIVE METHOD FOR PLACING EMERGENCY CALLS.
- 4.1.3 Based on the local emergency center servicing Customer's location, such center will operate with either basic 911 or E911 service.
- 4.1.4 With basic 911 service when a caller from the Customer's Registered Address dials the digits 9-1-1, the call is sent to the local emergency center serving the Customer's location. Operators answering the call will not have automatic access to the caller's call-back telephone number or the Registered Address because the emergency center will not be equipped to receive, capture or retain Customer's assigned 46 Labs telephone number and Registered Address. Accordingly, callers must be prepared to provide both call-back and address information. If the call is dropped or disconnected, or if the caller

is unable to speak, the emergency operator answering the call will not be able to call the caller back or dispatch help to the caller's address.

- 4.1.5 As additional local emergency centers become capable of E911 functionalities, 46 Labs will automatically upgrade customers from basic 911 to E911 service. 46 Labs will not notify Customer of the upgrade. With Enhanced 911 service (E911), when a caller from the Customer's Registered Address dials the digits 9-1-1, the 46 Labs telephone number and subscriber's registered address is automatically sent to the local emergency center serving your location. The emergency operators will have access to this information regardless of whether the caller is able to verbally provide such information to the emergency call-taker. Accordingly, with E911 service, the emergency call-taker will have the caller's call-back telephone number and registered address information just by virtue of the caller placing the call using the digits 9-1-1.
- 4.1.6 Some Customers will have the ability to directly update their own E911 location via an online portal. Customer is solely responsible for setting the E911 location accurately to the correct physical location of Customer's equipment (desk phone, softphone, videophone or mobile phone) with 46 Labs.
- 4.1.7 In limited circumstances, Customers equipped with basic 911 or E911 may have their calls routed to the national call center.
- 4.1.8 46 Labs' Service is Internet based and 911 services are different from that of traditional wireline services. Customer acknowledges and agrees to inform all employees, guests, and other third persons who may use the Service of the potential complications arising from basic 911 or E911 dialing and more specifically that basic 911 and E911 services will not function in the case of a service failure for any of the following reasons: (a) the telephone device to which a particular telephone number has been assigned is moved to a location outside the premises where the telephone device was originally installed, the "registered address,"; (b) there is an outage, degradation or other disruption of power at the Customer's location; (c) there is outage, degradation or other disruption of Customer's broadband Internet connection, whether such connection is provided by 46 Labs or another provider; (d) suspension of services due to billing issues; (e) any other service outages not described herein; (f) Customer's failure to provide a correct physical address in the requisite format may cause all basic 911 or E911 calls to be routed to the incorrect local emergency service provider; (g) the 911 or E911 call is routed to a long distance trunk group instead of a local trunk group; and/or (h) if Customer uses the public Internet for voice calls (or voice call signaling), Customer may not be able to access 911 or E911 services. Under any of the circumstances enumerated in items (a) through (h), above, 46 Labs will not be liable for any inability to dial 911 using 46 Labs VoIP services or for the misrouting of any calls made to the PSAP emergency center or to a municipal emergency service providers, and Customer further agrees to defend, indemnify and hold harmless 46 Labs, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to 46 Labs in connection with 46 Labs' VoIP services, from any and all claims, losses (including loss of profits or revenue), damages, fines, penalties, costs and expenses (including, without limitation, attorneys' fees and expenses) by, or on behalf of, Customer or any third party or user of

46 Labs' VoIP services relating to the non-availability of 911 dialing. 46 Labs' suppliers will not be liable to Customer for any damages for any reason.

- 4.1.9 If Customer routes 911 calls to 46 Labs utilizing anything other than 46 Labs 911-enabled DIDs as the source, then Customer is subject to surcharges for the call.
- 4.1.10 For the PSAP to receive the Customer's correct 911 address information, Customer must route their 911 calls to 46 Labs using DIDs which are assigned by 46 Labs or ported to 46 Labs and set up by 46 Labs as 911-enabled. If Customer routes 911 calls using 46 Labs 911-enabled DIDs to another phone company, then i) the PSAP may not receive the proper address, and ii) that other phone company may charge Customer for such call.

4.2 911 Notice. The following physical notice will be supplied with 46 Labs-supplied VoIP Equipment:

Federal Communications Commission 911 Notice:

911 SERVICE MAY NOT BE AVAILABLE ON THIS PHONE IF: the phone is moved to a location outside the premises where it was originally installed;  
there is a loss of power to the phone;  
or there is a loss of the phone's broadband connection.

- 4.2.1 Placement. This notice must be placed and remain near the phones used for your 46 Labs VoIP Service. Customer should call 46 Labs for a replacement notice card if Customer loses the provided notice or requires additional copies.
- 4.2.2 Additional Requirements for SIP Trunking 911. For basic 911 or E911 to be accurately routed to the appropriate emergency responder, the Customer must provide the telephone number ("TN") associated with the SIP trunking service for the registered address, in the 'userpart' of the 'from uri' contained in the SIP 'from' header. The SIP trunk service may not support basic 911 or E911 dialing in the same manner as traditional wireline phone service. Further, 911 or E911 services may not be available for 46 Labs' SIP Trunking products, which are not intended as a replacement for local phone service.
- 4.2.3 Customer Duty to Inform Regarding 911 and E911 Services. Customer acknowledges and agrees to inform all employees, guests, and other third persons who may use the service that basic 911 and E911 services will not function in the case of a service failure for any of the following reasons: (a) power failures, (b) suspended or terminated broadband service, (c) suspension of services due to billing issues, and/or (d) any other service outages not described herein. Customer further acknowledges that failure to provide a correct physical address in the requisite format may cause all basic 911 or E911 calls to be routed to the incorrect local emergency service provider. Furthermore, Customer recognizes that use of the service from a location other than the location to which the service was ordered, i.e., the "registered address," may result in basic 911 or E911 calls being routed to the incorrect local emergency service provider.
- 4.2.4 Softphone – E911 Calling Not Available. 46 Labs may make available to Customer a Softphone. Customer will NOT be able to place outgoing calls using the Softphone, including calls made to emergency services through 911, E911 or the emergency numbers. In addition, even if Customer purchases 46 Labs' separate outbound Softphone service, Customer will NOT be able to make calls to emergency services

using E911 services. 46 Labs strongly recommends that Customer has, at all times, access to a standard telephone or a cellular phone to place emergency phone calls whenever 46 Labs' outbound Softphone service is being used.

- 4.2.5 No 0+, Operator Assisted, or x11 Calling. 46 Labs Services do not support 0+ or operator assisted calling, including, without limitation, collect calls, third party billing calls, 900, or calling card calls. 46 Labs Services may not support 311, 511, and other x11 services in one or more service areas.
- 4.2.6 Incompatibility with Other Services. 46 Labs Services may not be compatible with non-voice communications equipment, including but not limited to: home security systems; TTY; medical monitoring equipment; TiVo; satellite television systems; PBX; Centrex; other private telephone networks; other broadband services; home networking; or computer modems. There may be other services with which 46 Labs Services are incompatible. 46 Labs does not warrant that the Services will be compatible with all broadband services. Some providers of broadband service may provide modems that prevent the transmission of communications using 46 Labs' Services. 46 Labs EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES REGARDING THE COMPATIBILITY OF THE SERVICES WITH ANY PARTICULAR BROADBAND SERVICE. CUSTOMER WAIVES ANY CLAIM AGAINST 46 Labs FOR INTERFERENCE WITH OR DISRUPTION OF THESE SERVICES AND EQUIPMENT.
- 4.2.7 Bandwidth Requirements. For 46 Labs' local SIP services, including Voice Over MPLS for SIP services, the Customer shall be responsible for ordering a sufficient amount of bandwidth to support the desired number of simultaneous calls and permit the applicable audio compression. In the event of insufficient bandwidth, or in the event Customer attempts to place more simultaneous calls over a circuit than what the circuit can support, Customer may experience degraded call quality or unavailable connectivity. 46 Labs' services that utilize VoIP can also be affected by insufficient bandwidth or overutilization.
- 4.2.8 Porting Numbers. 46 Labs will require a completed and signed LOA for any numbers or toll free numbers the customer wishes to port. In addition, 46 Labs will require a recent, applicable copy of Customer's current phone bill that contains the Customer's BTNs as well as a record of any numbers that need to be ported. 46 Labs shall not be responsible or liable for any claims or damages customer or other service providers' requests for porting of numbers.
- 4.3 Requested Start Date. 46 Labs will use its commercially reasonable efforts to activate Services by the agreed-upon date. However, 46 Labs cannot guarantee Service activation by a particular date because of reliance on third parties, including Customer, to perform certain tasks and provide certain information before 46 Labs can activate Services. Customer is responsible for canceling any communications services that the Services will replace and for any and all fees related to those services. Customer is advised not to cancel any services until the Customer has received written confirmation that the porting has been successfully completed.
- 4.4 Bandwidth Measurements. There are many types of bandwidth speed tests, including various public speed test websites. These sites are subject to inaccuracy and variable results, and do not provide scientific or reliable data for troubleshooting by 46 Labs. 46

Labs will not accept speed test results from such websites. 46 Labs and its underlying providers will only utilize Iperf or RFC-2544 testing terminating to on-net facilities and are considered industry standards for speed performance testing. With respect to Ethernet circuits, there is an inherent overhead by the nature of the protocol coupled with equipment such as routers, adaptors and connectors, and the industry standard for the usable portion of the bandwidth is approximately 80% – 85% of any given Ethernet bandwidth.

## **5 Billing and Payment Arrangements.**

- 5.1 Form of Invoice. 46 Labs shall send invoices for Services by either email, web portal or surface mail. Any invoice delivered by any of these methods shall constitute a valid bill for Services.
- 5.2 Payment, Due Date.
  - 5.2.1 Payment Obligation.
    - 5.2.1.1 Services Generally. Customer's obligation to pay for Services and the associated BUC's MRC, NRC and MUCs fees shall begin on the Start of Service Date. For a monthly recurring fee that begins after the first day of the month, such fees will be prorated for the initial billing period. Each month, 46 Labs shall bill Customer in arrears for BUCs and MUCs usage fees, non-recurring and pro-rata monthly fees if any as well as in advance for all applicable third-party services. circuit port, loop and equipment MRC.
    - 5.2.1.2 Circuit Services, Customer's obligation to pay for Circuit Services shall begin on the Circuit Start Date. Customer networking issues, whether the result of improper network design, equipment issues, or incorrect information supplied to 46 Labs Communications by or on behalf of the Customer, shall not relieve the Customer of the obligation to pay for the Circuit Services, including circuit fees, beginning on the Circuit Start Date. In the event Customer delays or impedes 46 Labs from expeditiously submitting Customer's order to 46 Labs' underlying carrier, Customer pricing may change, and any pricing change will become effective upon notification by 46 Labs. For MPLS Services, including voice over MPLS, the Customer is required to coordinate with 46 Labs to install the hub site first, with each remote site to follow.
    - 5.2.1.3 Underutilization of Broadband Services. Customer understands and acknowledges that 46 Labs' underlying carriers may terminate service on any circuit for underutilization. Customer understands that such termination would in no way affect Customer's commitment to pay for all monthly circuit fees associated with broadband circuits for the entire term of the contract. 46 Labs will provide Customer fifteen (15) days written notice of its underlying carrier's intent to disconnect, and Customer shall have the option of increasing usage to prevent disconnection of circuits, or alternatively accepting disconnection of designated circuits. In the event of disconnection, Customer shall reimburse 46 Labs for any circuit disconnection fees charged by the underlying carrier to 46 Labs.
    - 5.2.1.4 Fees for Excessive Incomplete Calls, Excessive Call Attempts.
      - 5.2.1.4.1 Excessive outbound call attempts. If Customer utilizes the 46 Labs underlying network for call termination, Customer may not have an excessive percentage of

outbound incomplete calls, as calculated on the basis of total outbound call attempts in a month per unique customer account. An excessive call attempt surcharge of \$0.005 per call will be assessed for all incomplete calls, whether outbound or inbound, deemed excessive by 46 Labs in its sole and absolute discretion. For customers utilizing the 46 Labs network whose total number of DS1 circuits ordered is four (4) or less, including all circuits utilizing the 46 Labs network ordered previously or separately by Customer, the Excessive Call Attempt Surcharge shall not apply until such time as Customer's total number of DS1 circuits utilizing the 46 Labs network exceeds 4. For customers utilizing toll free services, Customer may not have an excessive percentage of inbound or outbound toll-free incomplete calls, as calculated based on total toll free call attempts by end user customers in a month per unique customer account. An Excessive Call Attempt Surcharge of up to \$0.04 per call will be assessed for all toll-free incomplete calls deemed excessive by 46 Labs in its sole and absolute discretion.

- 5.2.1.4.2 AUP Violation. In addition to the fees for excessive use, it will be considered a violation of 46 Labs' AUP if the Customer has an excessive percentage of inbound call attempts.
- 5.2.2 Prepayment.
  - 5.2.2.1 Unless Customer receives credit approval in writing from 46 Labs', the Customer will be invoiced for all MRCs on a prepaid basis. Customer will be billed in arrears for MUCs, NRCs and any pro-rata MRC or MUC. MRCs or MUCs that begin or are terminated between the Start of Service Date and the end of a billing period will be prorated.
  - 5.2.2.2 46 Labs may invoice customer in advance for all applicable third-party services fees. Customer shall pay for all Services ordered from 46 Labs, pursuant to the terms and rates set forth in any SO or associated pricing exhibits. Customer shall timely pay the full amount invoiced less any Billing Dispute, even if Customer expects a portion of the invoiced amount to be paid or reimbursed by a future credit.
  - 5.2.2.3 Prepayment required. In the event Customer orders any Circuit Services, then the Customer shall provide together with submission of the Order an initial payment equal to the quoted installation fees and one month's MRC for all loops and ports ordered. The amount received shall be applied against the initial installation fees charged on the first month's invoice. The remainder will be credited against customer's last monthly invoice.
- 5.2.3 Liability for Completed Calls. Customer understands that rates to special service numbers and non-US mobile numbers can be significantly higher than landline rates and Customer is wholly responsible for all calls made over their lines. CUSTOMER IS LIABLE FOR ALL COMPLETED CALLS MADE UTILIZING CUSTOMER'S EQUIPMENT, WHETHER AUTHORIZED OR UNAUTHORIZED, AND REGARDLESS OF SUITABILITY FOR CUSTOMER'S APPLICATIONS, AND/OR ANY FAILURE OF OTHER NETWORK ELEMENTS OR SERVICES WHICH MAY IMPACT CUSTOMER'S ABILITY TO OPERATE. CUSTOMER REQUESTS TO BLOCK INTERNATIONAL SERVICE ON 46 LABS SERVICE ORDERS SHALL NOT RELIEVE CUSTOMER FROM LIABILITY FOR INTERNATIONAL CALLS MADE ON CUSTOMER'S SERVICE. 46

Labs SHALL MAKE COMMERCIALY REASONABLE EFFORTS TO PROCESS SUCH BLOCKING REQUESTS, SUBJECT TO NETWORK LIMITATIONS AND RESTRICTIONS. CUSTOMER SHALL NOT HOLD 46 Labs LIABLE FOR ANY FRAUDULENT CALLS WHICH MAY OCCUR ON CUSTOMER'S SWITCHED, DEDICATED OR CALLING CARD SERVICES, INCLUDING ANY FRAUD RELATED TO UNAUTHORIZED ACCESS OF CUSTOMER'S TELECOMMUNICATIONS EQUIPMENT. ALL INTERNATIONAL AND OFFSHORE CALLS THAT ARE NOT LISTED ON 46 Labs' RATE SHEET FOR THE CUSTOMER ARE BILLED AT FIVE DOLLARS (\$5.00) PER MINUTE. All domestic long distance calls that are not listed on 46 Labs' rate sheet for the Customer are billed at fifteen cents (\$0.15) per minute.

- 5.2.4 30-Day Payment Customers. Payments from Customers who receive written credit approval from 46 Labs' shall be due thirty days (net 30) from the date of the invoice. Undisputed amounts which are not paid in full within thirty (30) days of the invoice date will be past due and subject to an additional fee equal to the lesser of one and one half percent (1.5%) per month late payment fee or the maximum monthly rate permitted by law on past-due balances. In the event of non-payment of any past due invoice due or a material breach of this Agreement, including, but not limited to access arbitrage or fraudulent use of services, all outstanding invoices, including any unbilled usage shall become immediately due and payable, and Customer shall be considered in default.
- 5.2.5 Customer shall be considered in default of the Agreement and all outstanding invoices and fees, including any unbilled Monthly Usage Charges shall become immediately due and payable.
- 5.2.6 Rounding. Unless otherwise stated in a SO, fees for Services shall be rounded up to two digits per call to the next cent. By way of example, a cost calculated to \$1.214 would be rounded to \$1.22.
- 5.3 Credit Information. Customer agrees that 46 Labs may request credit information from third parties, and Customer authorizes the release of such information as part of this application.
- 5.4 Forms of Payment. Acceptable forms of payment include ACH, eCheck, credit card and wire transfers. Payment by paper check or cash is not acceptable. 46 Labs may, in its sole discretion, accept payment by credit card. A Credit Card Surcharge will be applied to the total amount paid using a credit card. Customer's sole recourse for disputed fees shall be as outlined in Section 7. If Customer pays 46 Labs by credit card then Customer's continued use of Services after Customer's payment to 46 Labs appears on Customer's credit card account, shall be construed as Customer's acknowledgement of the validity of such undisputed fees. Thereafter, Customer waives all rights to reverse such fees and shall be responsible for all expenses and fees 46 Labs incurs for contesting an attempt to reverse the fees.
- 5.5 Taxes, Surcharges and Other Service Related Fees.
- 5.5.1 Customer's obligation to pay applicable taxes, cost recover fees, set-up fees and all other fees due and owing for Service shall survive the expiration of the Agreement. 46 Labs' surcharges are listed at [www.46labs.com/service-terms/](http://www.46labs.com/service-terms/).
- 5.5.2 Taxes. Service fees are exclusive of all taxes, fees, tax-related surcharges and tax-like surcharges as enumerated below. Customer shall be responsible for, and must pay, all



taxes, including, without limitation, sales, use, excise, gross receipts, value added, access, bypass, franchise, telecommunications, consumption and other taxes, fees, duties, charges or surcharges, roaming charges, however designated, and imposed directly on 46 Labs based on the provision, sale or use of Service. If Customer believes it, or the Services it receives and uses, are exempt from any tax, Customer will provide 46 Labs with a properly executed Tax Exempt Document in a form acceptable to 46 Labs that evidences the exemption claimed. Customer shall renew such certification annually and shall provide evidence of such continuing certification upon request by 46 Labs. In the event Customer fails to renew its tax-exempt certification, or if its tax-exempt certification is repealed, Customer shall be responsible to 46 Labs for all such taxes from the date Customer's tax-exempt certification became invalid. Tax exemption will only apply to Taxes incurred after the date 46 Labs receives the updated Tax Exempt Document

- 5.5.3 Cost Recovery. 46 Labs may impose recovery fees in order to recover costs associated with regulatory compliance, administrative and network facilities costs.
  - 5.5.4 Set-up, Installation and Disconnect Fees. Customer shall pay all applicable inspection, repair, set-up, Demarc extension, installation and disconnect fees, service upgrade or relocation fees, which will be invoiced on a Non-Recurring Charge basis and are non-refundable. Quoted installation fees contemplate installations in normal locations under normal working conditions during regular business hours. Any installations under other circumstances including, but not limited to, hazardous locations, on an expedited basis outside of standard installation intervals will be subject to additional fees.
  - 5.5.5 Third Party Service Charges. If an entity other than 46 Labs imposes fees on 46 Labs in connection with the provisioning of Service to Customer such fees will be invoiced by 46 Labs on a pass-through cost basis.
  - 5.5.6 Effect of Termination. If service is terminated for any reason, Customer will pay 46 Labs for (a) Services that Customer has used through the date that 46 Labs or Customer terminates the Services, (b) any outstanding balance for NRCs or MUCs, and (c) all fees that may still be due or may be incurred for early termination including ETL. Customer's obligation to pay applicable taxes and all other fees due and owing for Service shall survive Termination.
- 5.6 Early Termination Liability. Except as may be mutually agreed upon in writing in the event Customer terminates the Service or the Agreement or any SO is after submission but before the end of the applicable term, the Customer shall pay to 46 Labs on demand, as liquidated damages and not as a penalty, an Early Termination Liability fee. In the event of Customer's early termination, 46 Labs' actual damages would be impractical and/or extremely difficult to ascertain, so the parties agree the ETL set forth above is a reasonable estimate of actual damages. With respect to Customer terminating the Agreement after the submission of paperwork but prior to the Start of Service Date, the number of months remaining in the term shall be the total number of months for which the Customer has contracted. Assessment of an ETL does not relieve Customer of Customer's obligation to pay any non-recurring fees or any undisputed past due fees and interest thereon.

- 5.7 Recovery of Collection Costs. Unless otherwise prohibited by law, Customer shall reimburse 46 Labs for any costs incurred by 46 Labs in undertaking any collection activity, including, but not limited to, the reimbursement of reasonable attorneys' fees. Reasonable attorney's fees shall include the time and costs associated with 46 Labs' in-house legal staff efforts related to the collection activity. For purposes of calculating the time and costs, the Parties stipulate that 46 Labs' in-house legal staff's time shall be billed at \$250.00 per hour.
- 5.8 Right of Offset. If Customer defaults on any payment obligation owed 46 Labs under any agreement for more than thirty (30) days and 46 Labs has funds that are owed the defaulting Customer, 46 Labs may offset that which it is owed by first applying such funds to the full balance due by the defaulting Customer. Any amount remaining following the offset shall be remitted to Customer in the normal course of business.  
No Rollover. Unused Monthly base capacities for all services, including but not limited to minutes or text bundles, do not rollover into subsequent months.
- 5.9 Call Rating.
- 5.9.1 Local Voice Service Rating. Call Rating: Calls will be rated as local calls if they are terminated within subscriber's local calling area associated with the call's originating ANI which must be a 46 Labs assigned DID. All non-Local Toll Calls and non-Local Voice Calls shall be rated as either intrastate, interstate, or international long distance.
- 5.10 Long Distance Call Rating. Long distance calls will not be rated as local calls. Long Distance Calls shall be rated as one of the following:
- 5.10.1.1 Intrastate which are calls originate and terminate in the same US state within the contiguous 48 U.S. states;
- 5.10.1.2 Interstate which are calls that originate and terminate in different US States within the 48 contiguous U.S. states;
- 5.10.1.3 offshore which are calls that terminate or originate in the United States territories, Alaska or Hawaii, with the alternate leg originating or terminating within the contiguous 48 U.S. states;
- 5.10.1.4 international which are calls originate from and/or terminate into a country other than the United States and its territories.
- 5.10.2 Indeterminate are calls that do not meet one of the prior categories and will be rated at the higher of the intrastate or interstate rates.
- 5.10.3 These rating categories only apply if a valid NADP telephone number appears in the originating ANI and terminating ANI provided in the call signaling with respect to any US call.
- 5.10.4 Local Call Rating Exclusion: Rating outbound calls as local only applies to calls that utilize DIDs assigned by 46 Labs or that have been ported to 46 Labs' service as the originating ANI. Termination of calls from DIDs not provided by 46 Labs or ported to 46 Labs' service will be rated as either Interstate or Intrastate long distance. This distinction of inter versus intrastate long distance will be determined based on the originating and terminating ANI provided in the call signaling. If 46 Labs cannot accurately rate a call due to an invalid or omitted originating ANI, and its rating jurisdiction is not international, 46 Labs will default to rating the call at the prevailing intrastate long distance rate.

- 5.10.5 Toll Free Pricing Requirement. For the Customer to obtain the pricing of toll free calls set forth in a Service Order (a) all associated DID's to the toll free numbers must be ported to 46 Labs Communications or (b) 46 Labs must assign the associated DID's, otherwise a higher switched rate will apply for toll free minutes.
- 5.11 Call Jurisdiction. For purposes of determining call jurisdiction, 46 Labs uses the originating and terminating ANI's provided in the call signaling. 46 Labs utilizes the value in the 'FROM' field in the SIP header as the originating ANI for establishing the jurisdiction of the call. However, in the event a value is present in any of the SIP header fields used for caller id (e.g. Remote Party ID, P-Assert-Identity) 46 Labs may use this in lieu of the "FROM" field as the originating ANI to determine the jurisdiction of a call. If 46 Labs cannot accurately rate a call due to an invalid or omitted originating ANI, and its rating jurisdiction is not international, 46 Labs will default to rating the call at the prevailing Intrastate long distance rate.
- 5.12 Carrier Determination. 46 Labs will determine the originating or terminating carrier by evaluating the terminating ANI down to the NPA-NXX-X level.
- 5.13 Originating ANI Required. Customer is required to maintain the originating ANI for all outbound calls and abstain from any level of ANI manipulation in the call signaling.
6. SIP Trunk Services: Requirements and Limitations.
- 6.1. Description of Services. A full description of 46 Labs' Sip Trunk Services is available at [www.46labs.com/service-terms/](http://www.46labs.com/service-terms/).
- 6.2. 46 Labs' DID Required. Only telephone numbers or toll-free numbers provided by 46 Labs or ported to the 46 Labs network can be used in conjunction with this service. Outbound local, 911, outbound 800 calls or 411 calls are only available if the call's originating ANI is a 46 Labs assigned DID or DID that has been ported to the 46 Labs network.
- 6.3. Other SIP Trunk Service Requirements and Limitations. All special configurations are subject to 46 Labs' approval and 46 Labs reserves the right to terminate this agreement where proper interoperability testing has not been completed when required. Any traffic deemed to jeopardize the integrity of 46 Labs' network may be blocked by 46 Labs. 46 Labs SIP Trunk Service may not be compatible with all non-voice equipment, including but not limited to home security systems, TTY, medical monitoring equipment, certain versions of TiVO, satellite television systems, PBX, Centrex, other private telephone networks, or computer modems. The Customer waives any claim against 46 Labs for interference with or disruption of these services and equipment, as well as any claim that 46 Labs is responsible for any disruption to Customer's business, if applicable. If Customer uses public broadband or Internet access, 46 Labs does not warrant that SIP Trunk Service will be compatible with all broadband services and expressly disclaims any express or implied warranties regarding the compatibility of 46 Labs SIP Trunk Service with any particular broadband service.
- 7. Billing Disputes.**
- 7.1. Customer Obligation. Any invoices issued to Customer shall be deemed correct and binding on the Customer unless Customer files a dispute according to the provisions of this Section 7. Customer shall timely pay the full amount invoiced subject to Billing Disputes

described in this Section 7, even if Customer expects a portion of the invoiced amount to be paid or reimbursed in the future by a third party. Customer shall also pay any repair, telephone charges and fees for inspection, installation or repair of wiring performed on Customer's premises for the additional fees set forth in the Customer Policies.

7.2. Requirements for Valid Dispute. An invoiced fee will be deemed disputed by Customer if, and only if: (a) Customer believes in good faith that the fee was invoiced in error; (b) Customer provides 46 Labs written notice of the disputed fee no later than ten (10) days from the date of the invoice on which the fee first appeared; and (c) Customer's notice of the disputed fee includes the amount of the disputed fee, the reason the fee is disputed, and documentation supporting the dispute, and (d) Customer provides all documents supporting each dispute. Customer shall not have the right to withhold any amount not properly disputed. If Customer does not dispute fees on the invoice within ten (10) days from the date of the invoice, then the invoice will be deemed to be correct.

7.3. Resolution of Disputed Fees. 46 Labs shall have the right to determine, in good faith, the merit of each dispute and Customer's associated payment obligation. 46 Labs will investigate all billing disputes and notify Customer in writing that: (a) a credit will be issued to reverse any amount that 46 Labs determines was incorrectly billed, or (b) 46 Labs has determined that the disputed was invoiced correctly. After a billing dispute is resolved, if the dispute is resolved in 46 Labs' favor, Customer will, within five (5) business days of such resolution, remit to 46 Labs any required payment, plus interest at the lower of one and one-half percent (1.5%) per month or the maximum rate permissible under applicable state law, calculated from the due date until the date payment is received by 46 Labs. Failure to pay such amount in full within such five (5) day period shall be a breach of the Agreement and shall entitle 46 Labs, in addition to its other remedies at law or equity, to terminate all Services to Customer without notice and without liability of any kind or amount. If the dispute is resolved in Customer's favor, and Customer withheld payment of the disputed amount, then 46 Labs will issue a credit to reverse the amount incorrectly billed. If the dispute is resolved in Customer's favor and Customer previously paid the disputed amount, then 46 Labs will issue a credit to reverse the amount incorrectly billed and apply such credit against Customer's next invoice(s). If Customer is no longer being invoiced by 46 Labs, 46 Labs will remit to Customer the amount of the credit within forty-five (45) days of the date of such credit.

## **8 Services and Equipment.**

8.1 Products and Customer Equipment Supplied by 46 Labs.

8.1.1 License to Products. 46 Labs grants to Customer a personal, limited, non-transferable, non-exclusive, license, without the right to sublicense, transfer, copy or create derivative works, to use the Products during the term of the appropriate SO solely for use with the Service specified in such SO and in accordance with the Agreement.

8.1.2 Ownership of Products. Either 46 Labs or other third-parties own and will continue to own the Products used to provide Services. Customer may not decompile, reverse engineer or otherwise use any software code from any Products provided by 46 Labs or its suppliers. Some software necessary to fully utilize the full functionality of the Services may require Customer to accept additional terms and conditions required by the third-party providers of such Products. If Customer has purchased or leased Equipment from

46 Labs or its certified third-party leasing company, then the Customer must install Equipment in accordance with instructions provided by 46 Labs (or its third party vendor). Customer may not change the settings on any equipment supplied by 46 Labs or its agents without 46 Labs' express written consent. In addition, 46 Labs-provided equipment must be used solely for the purpose of Service utilization. 46 Labs will use commercially reasonable efforts to supply and configure the Products to allow Customer to use the Services, unless Customer is supplying its own equipment or purchasing it from a third party (including a 46 Labs authorized dealer or fulfillment partner). For any Product that Customer purchases directly through 46 Labs, 46 Labs may supply a new, refurbished or recertified Product. On new and recertified Product purchased by Customer through 46 Labs, Customer understands that any Product it purchases through 46 Labs, a recommended dealer or fulfillment partner is only designed to work with 46 Labs' Services. If Customer or 46 Labs terminates Services for ANY REASON, Customer will NOT be eligible for a refund, either full or partial, for any fees paid by Customer for a Product, or for third party-supplied equipment.

- 8.1.3 Return of Products. Customer agrees to return all Products provided 46 Labs or third party vendors within thirty (30) days of (a) the termination of Services for any reason or (b) upon receiving replacement Products for a non-functioning Product or as part of a Service upgrade. Customers may receive a prepaid shipping label by emailing the request to [shipping@46labs.com](mailto:shipping@46labs.com). Please include your company name, address and telephone number in the request. If Customer fails to return all of the Products within thirty (30) day period, 46 Labs shall invoice Customer for the current replacement cost of any Products not returned, plus taxes. The Products must be returned in the same condition as received, normal wear and tear excepted.
- 8.1.4 Warranty, Maintenance, Support, and Repair of Products. All equipment provided to Customer by 46 Labs is subject to the terms and conditions set forth in the manufacturer's or publisher's warranty, end-user license, or agreement applicable to such Products, with no additional warranty of any kind from 46 Labs. If Customer purchases equipment from 46 Labs, an authorized dealer or fulfillment partner, Customer must address any issues or warranty concerns relating to that equipment with the manufacturer of such equipment or the authorized dealer or fulfillment partner. 46 Labs will not repair, replace or warranty such purchased equipment. Customer shall reimburse 46 Labs for the entire cost, including direct labor costs at 46 Labs' current rates, to either repair or replace or both, any Product in the event that Product requires replacement due to (a) misuse or abuse, (b) failure to exercise reasonable care, (c) altering original 46 Labs configuration, (d) damage, (e) theft, or (f) disaster. If a replacement Product is requested for a 46 Labs-supplied non-purchased Product, 46 Labs will ship preconfigured replacements to Customer. Customer shall return any non-purchased faulty Product to 46 Labs within thirty (30) days of receiving the replacement Product or pay for such Product. Customer will not receive compensation for downtime associated with Product failure, replacement or repair. 46 Labs' liability is strictly limited to the pro-rata reduction of 46 Labs' monthly recurring charges. Any Product supplied by 46 Labs as a replacement Product will carry the remainder of any manufacturer

warranty. 46 Labs may also provide any Product upgrades at no expense to Customer, and Customer shall use all such upgrades provided by 46 Labs.

8.1.5 Product Maintenance. 46 Labs shall not replace, and the Customer shall be responsible for the full cost of replacement of Product in the event of damage: (a) to consumable parts, such as batteries, or protective coatings designed to diminish over time unless failure has occurred due to a defect in materials or workmanship; (b) to cosmetic damage, including but not limited to scratches, dents, and broken plastic on ports; (c) to damage caused by use with other products; (d) to damage caused by accident, abuse, misuse, liquid contact, fire, earthquake or other external causes; (e) to damage caused by operating the product outside the permitted or intended uses described by 46 Labs; (f) to damage caused by service (including upgrades and expansions) performed by anyone who is not a representative of 46 Labs; (g) to a product or part that has been modified to alter functionality or capability without the written permission of 46 Labs; (h) to defects caused by excessive wear and tear or otherwise due to the excessive aging of the product or (i) if any serial number has been removed or defaced. 46 Labs and its suppliers shall have no obligation or liability in connection with any equipment not purchased through 46 Labs even if configured by 46 Labs, or for any abuse, misuse or reconfiguration, including, but not limited to, the addition of software or other devices, of any equipment by any party other than 46 Labs.

8.2 Customer Provided Equipment, Warranties, Limitations.

8.2.1 NO WARRANTY FOR CPE. IN ADDITION TO THE WARRANTY DISCLAIMERS ELSEWHERE IN THIS AGREEMENT, 46 LABS EXPLICITLY DISCLAIMS ANY AND ALL WARRANTY OR MAINTENANCE RESPONSIBILITY FOR CPE. ANY WARRANTY CLAIMS, MAINTENANCE, OR REPAIRS FOR CPE WILL BE THE SOLE RESPONSIBILITY OF THE CUSTOMER.

8.2.2 Use of Customer CPE. 46 Labs is not responsible for the configuration of, maintenance or support of, Customer's personal computers, network, telecommunications or other telephony equipment that may be necessary to make CPE compatible with the Service. Customer may not use CPE that 46 Labs has not certified for use with the Services. Customer is solely responsible for ensuring that CPE complies with the compatibility guidelines published by 46 Labs. If Customer or a third party changes the settings with respect to CPE at Customer's location that 46 Labs uses to provide Service, including, but not limited to the addition of software or other devices on the local area network, then Customer assumes the risk that the Service may not work. Customer is solely responsible for ensuring the proper functioning of CPE. 46 Labs will not provide any assistance in the setup or configuration of CPE at the time of installation. Customer is solely responsible for the management of CPE. 46 Labs' will not provide any support with the configuration or maintenance of CPE. If 46 Labs dispatches a technician in response to a trouble ticket ultimately determined by 46 Labs to be the result of issues with the CPE, 46 Labs will charge Customer for the costs to dispatch the technician.

8.2.3 SLA Credit Limitations. Customer will not receive SLA credits if 46 Labs determines that CPE contributed to a support event for which Customer is requesting a credit. Customer will not receive SLA credits if 46 Labs determines that CPE contributed to the event for which Customer is requesting.

8.3 Customer Cooperation. Provisioning and maintaining Service will require Customer's cooperation, including allowing 46 Labs or its third-party contractors, reasonable and safe access to Customer's premises to activate and support the Service.

## 9 Confidentiality, Publicity.

9.1 Confidentiality Obligation, Notice. Customer shall maintain the confidentiality of the Confidential Information and shall use the same level of care, but in no event less than a reasonable standard of care, as it uses to maintain the confidentiality of its own confidential information. Customer shall take reasonable steps to ensure that Customer's personnel, subcontractors, and personnel of such subcontractors, if any, comply with this Section 9.1, which steps shall include obtaining enforceable written agreements from Customer's personnel and subcontractors and requiring enforceable written agreements from personnel of subcontractors binding such entities and individuals to obligations of confidentiality no less restrictive than those set forth in this Agreement. Customer agrees that if it is required by law to disclose the Confidential Information, Customer shall first give written notice of such required disclosure to 46 Labs and 46 Labs shall have a reasonable opportunity to prevent or limit the third-party disclosure. Customer acknowledges that monetary damages may not be sufficient remedy for unauthorized disclosure or use of Confidential Information and that 46 Labs may seek without waiving any other rights or remedies, such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. The confidentiality obligations under this Agreement shall remain in effect during the term of this Agreement and for a period of five (5) years after termination.

9.2 Customer Confidential Information. 46 Labs' confidentiality obligations to Customer are described in the PP.

9.3 Passwords. Customer will be asked to create a password in order to gain access to Customer's account information on-line or when contacting a 46 Labs agent by phone. Customer agrees to keep all passwords and account information confidential and Customer is solely responsible for any liability or damages resulting from Customer's failure to maintain that confidentiality, and for all activities that occur under Customer's password. Customer must immediately notify 46 Labs if Customer suspects any breach of security such as loss, or unauthorized disclosure or use of Customer's password and account.

9.4 Non-Disclosure and Publicity. Neither party shall disclose to any third party either the existence of or the terms of the Agreement without the prior written consent of the other Party.

## 10 Representations and Warranties.

10.1 Customer Representations and Warranties.

10.1.1 Customer warrants and represents that (a) it has full power and authority to enter into this Agreement; (b) the signatory to this Agreement possesses all necessary authority to enter into this Agreement in all respects and render it effective; (c) that it shall comply with all applicable federal, state, and local laws, ordinances, regulations and codes in its use of the Services. The laws and regulations include United States export control laws. Customer shall adhere to the laws of foreign countries, particularly if traveling



internationally, with a device used in conjunction with the Service. Customer represents that the address provided to 46 Labs for billing purposes is either Customer's residential or business street address.

- 10.1.2 Customer DIDs. Customer warrants that the DIDs it has been assigned by 46 Labs Communications when utilized by Customer to place outbound calls shall at all times accurately reflect the name of Customer as has been provided by Customer to 46 Labs Communications. The out-pulsed caller identification information shall not be altered, manipulated or modified by Customer in any such manner that can cause harm, injury or misrepresent to the called party the nature of the call and shall at all times remain in compliance with the provisions of the TCIA.
- 10.1.3 Federal Laws and Regulations. Customer further warrants and represents that it will adhere to all federal, state, and local laws, ordinances, regulations, and codes applicable to telemarketing. These laws include, but are not limited to the TSR, the TCPA, U.S. Federal Do Not Call rules (set forth in 47 C.F.R. section 64.1200 and 16 C.F.R. Part 310) and the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. This list of laws and regulations is not intended to provide Customer with a complete list of all applicable law. It is Customer's responsibility to consult with its own attorney regarding the applicable law for its use of the Service. Customer has sole responsibility for ensuring Customer checks the U.S. national Do Not Call Registry as prescribed by law and is not calling any party on the registry. Customer is solely responsible for determining any and all lead lists, contact lists, automatic dialing lists it uses do not violate these laws, rules, or regulations. 46 Labs assumes no liability for any equipment or malfunction of any CPE or Product used to upload, download, block, or dial telephone numbers called by or on behalf of Customer. Regardless of whether or not 46 Labs takes action to mitigate or correct a violation of a regulation or law from Customer's use of the Service, Customer shall bear all responsibility and be fully liable for a violation of this Section 10.1.
  - 10.1.3.1 Enhanced Traffic Long-distance and Sip Trunking Warranties, Limitations.
    - 10.1.3.1.1 Customer represents and warrants that each call originated to 46 Labs as native IP traffic meets the criteria defined as (a) traffic that originates as IP from the originating caller, and (b) is then transported as IP from Customer to 46 Labs. Customer expressly agrees, represents and warrants that all long distance or SIP trunking traffic delivered by Customer to 46 Labs is SIP-originated in accordance with all applicable federal and state law and regulation and, without limiting the foregoing, it will not use the Services to originate or terminate TDM or voice calls in a manner that bypasses applicable switched access or other fees.
    - 10.1.3.1.2 Customer is prohibited from intermingling traffic or for utilizing long-distance services for anything other than SIP originated or terminated service in accordance with all applicable federal and state regulations.
  - 10.1.4 Call Recording and Monitoring. Customer warrants and represents that it will adhere to all federal, state, and local laws, ordinances, regulations, and codes applicable to telephone call monitoring and recording. Customer acknowledges and understands that there are federal and state statutes governing the electronic recording of telephone

conversations and that 46 Labs will not be liable for any illegal use of the service. It is the Customer's sole responsibility (a) to determine if the electronic recordings are legal under the applicable federal and state statutes and regulations, and (b) to fully comply with all applicable federal and state statutes and regulations. 46 Labs expressly disclaims all liability with respect to Customer's recording or monitoring of telephone conversations. 46 Labs is not responsible for any misinterpretation, lack of understanding or lack of knowledge regarding the use of electronic recordings or monitoring conversations or the use of its products by Customer whether legal or illegal. Customer shall fully hold 46 Labs harmless and indemnify 46 Labs from all damages and/or liabilities or potential liabilities arising from or related to Customer's unlawful recording or monitoring of any telephone conversation using 46 Labs' service.

10.1.5 CPN or Pseudo CPN Requirements for Telemarketers. Per the Federal Trade Commission, telemarketers are required to transmit their telephone number to Caller ID services. Customer warrants that it will provide CPN or pseudo-CPN information in compliance with federal rules.

10.2 46 Labs Representations and Warranties.

10.2.1 46 Labs warrants that (a) 46 Labs has full power and authority to enter into this Agreement and convey the rights conveyed herein; and (b) the signatory to this Agreement possesses all necessary authority to enter into this Agreement with 46 Labs in all respects and render it effective.

10.2.2 Warranty Disclaimer. 46 LABS SPECIFICALLY AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER OR THE FACILITIES AND EQUIPMENT FURNISHED PURSUANT TO THE AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL 46 LABS OR ANY AFFILIATED PERSON OR ENTITY BE LIABLE TO CUSTOMER OR ANY AFFILIATED PERSON OR ENTITY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, RELIANCE, COST OF COVER, SPECIAL, PUNITIVE OR SIMILAR OR ADDITIONAL DAMAGES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, INCURRED OR SUFFERED AS A RESULT OF UNAVAILABILITY, PERFORMANCE, NON-PERFORMANCE, TERMINATION, BREACH, OR OTHER ACTION OR INACTION UNDER THE AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST REVENUES OR PROFITS, LOSS OF ABILITY TO PERFORM, LOST CONTRACTS, COSTS OF THIRD-PARTY REPAIR OR REPLACEMENT, OR FAILURE OF 911 OR OTHER FEATURES, EVEN IF CUSTOMER OR ANY AFFILIATED PERSON OR ENTITY ADVISES 46 LABS OR ANY AFFILIATED PERSON OR ENTITY OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN THE EVENT A VENDOR(S) IS EMPLOYED ON BEHALF OF THE CUSTOMER, THE CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR PAYMENT TO THE VENDOR EMPLOYED WITHOUT CLAIM TO 46 LABS. 46 LABS SHALL NOT BE RESPONSIBLE FOR PAYMENT OF ANY VENDOR FEES INCURRED BY CUSTOMER OR ANY OTHER PARTY, WHETHER OR NOT SUCH FEES ARE AS A RESULT OF ERROR OR OMISSION BY 46 LABS OR ANY OTHER THIRD PARTY. IN

THE EVENT 46 LABS DISPATCHES A VENDOR, LOCAL EXCHANGE CARRIER OR OTHER TECHNICIAN ON BEHALF OF CUSTOMER, AND IT IS DETERMINED THAT THE DISPATCH WAS DUE TO A CUSTOMER, CPE, WIRING, EQUIPMENT OR OTHER CUSTOMER RELATED ISSUE, THEN THE CUSTOMER WILL BE RESPONSIBLE FOR PAYMENT OF COSTS INCURRED BY 46 LABS FOR THE DISPATCH. 46 LABS SHALL NOT BE RESPONSIBLE FOR DAMAGE TO PROPERTY OR FOR INJURY TO ANY PERSON ARISING FROM THE INSTALLATION, MAINTENANCE OR REMOVAL OF EQUIPMENT OR THE PROVISIONING OF SERVICES, AND CUSTOMER HEREBY INDEMNIFIES AND HOLDS HARMLESS 46 LABS FROM AND AGAINST ANY LIABILITIES INCLUDING ATTORNEY'S FEES ARISING OUT OF SUCH DAMAGE OR INJURY. 46 LABS MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICES ARE FREE OF RIGHTFUL CLAIMS BY ANY THIRD PARTY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM 46 LABS, OR ITS EMPLOYEES, CONTRACTORS, OR AGENTS, REGARDING THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. CUSTOMER'S REMEDIES FOR CLAIMS UNDER THIS AGREEMENT SHALL BE LIMITED TO OUTAGE CREDITS AS DESCRIBED HEREIN.

10.2.3 Third-party Sites, Information and Content. For certain 46 Labs Services, including but not limited to dedicated Internet access and wireless data service, Customer will be communicating with and receiving information or data to or from independently owned and operated content providers or service providers. 46 LABS IS NOT A PUBLISHER OF THIRD-PARTY INFORMATION, APPLICATIONS, OR OTHER CONTENT AND IS NOT RESPONSIBLE FOR ANY OPINIONS, ADVICE, STATEMENTS, OR OTHER INFORMATION, SERVICES OR GOODS PROVIDED BY THIRD PARTIES. Third-party content or information providers may impose additional fees. They may have differing terms of use and differing policies than those of 46 Labs. Customer is solely responsible for all fees from such third-party content or information providers and is solely responsible for adhering to the terms and conditions and policies of such third parties. Delays or omission of information or data may occur with respect to third party content or information providers. Neither 46 Labs nor its content providers, service providers, affiliates, or other third parties shall be liable for any loss or injury arising out of or caused, in whole or party, by Customer's use of any information, application or content acquired through any 46 Labs Service.

## **11 Indemnification.**

11.1 46 Labs' Indemnification of Customer.

11.1.1 Misconduct. 46 Labs will defend and indemnify Customer, its employees, directors, officers and agents, from and against any suit, proceeding or other claim that is brought by a third-party and is caused by, arises from, or relates to damage to real or tangible personal property or personal injuries including death due to the gross negligence or willful act or omission of 46 Labs in the provision of Service by 46 Labs. This

indemnification shall not apply to any entity who is a party to or an affiliate of a party to this Agreement.

11.1.2 Intellectual Property. If a Service provided by 46 Labs becomes, or if 46 Labs reasonably believes a Service it is providing may become, the subject of a suit, proceeding or other claim by a third party alleging the Service directly infringes the U.S. patent, trademark, trade secret or copyright rights of such entity, 46 Labs shall, at its own expense and option may seek to remedy the allegations through any combination of the following: (a) procure the right for 46 Labs to continue to provide the Service; (b) modify or replace the Service with a different service that has substantially similar functionality; (c) discontinue providing or direct the cessation of any use of the Service and refund to Customer a prorated portion of any fees paid for the affected Service through the date of Service discontinuation or cessation. Additionally, if the Service is determined by a court of competent jurisdiction to have directly infringed on an entity's Intellectual Property rights, or if such claim is settled, 46 Labs shall indemnify Customer for its reasonable legal fees incurred to defend itself against such claim up to and including the time of final disposition or settlement of such claim and any payment required to be made by Customer pursuant to such judgment or settlement.

## 11.2 Customer's Indemnification of 46 Labs

11.2.1 Customer will defend and indemnify 46 Labs, its employees, directors, officers and agents, from and against any damages, penalties, interest, expenses, liabilities, suit, proceeding or other claim asserted, threatened, or brought by an entity that is caused by, arises from, or relates to: (a) damage to real or tangible personal property, personal injuries including death arising out of the gross negligence or willful act or omission of Customer in the use of the Service; (b) any fraud arising from Customer's use of the Service; (c) any failure of Customer to properly collect or remit taxes of services ordered hereunder; (d) representations regarding the nature of Customer's traffic and any use, operation or resale of Service by Customer in contravention of this Agreement, (e) claims of libel or slander arising from Customer's use of the Service; or (e) Customer's engagement of, or relationship or interaction with, any third party service provider.

11.2.2 Truth in Caller ID Act Indemnification. Customer shall forever indemnify, defend and hold 46 Labs harmless from any demand, claim, action, proceeding, fine, penalty or assessment brought or initiated by third parties, in their individual capacity, or regulatory agencies or authorities including, but not limited to, the Federal Communications Commission, State Attorneys General, Federal Trade Commission, state regulatory authorities where concurrent jurisdiction exists for any alleged or actual violation by Customer or its affiliates of the TCIA. This specific indemnity shall be a blanket indemnification for all consequences, whether known or unknown on the part of 46 Labs or Customer that may befall 46 Labs as a result of any such actual or alleged violation by Customer of the TCIA. This indemnification shall include, but not be limited to, any cost of defense incurred response required or documentation requested of 46 Labs due to any such violation of the TCIA by Customer. In the event parties other than Customer shall have use of the telecommunications services provided by 46 Labs through Customer, then the Customer agrees to forever indemnify and hold 46 Labs and any third party provider or operator of facilities employed in provision of telecommunications

services provided by 46 Labs harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which those parties may assert relating to any violation of the TCIA. Customer agrees to reimburse 46 Labs for all reasonable costs and expenses incurred by 46 Labs due to 46 Labs' direct participation in any administrative, regulatory, criminal or civil proceeding concerning Customer if 46 Labs' involvement in the proceedings is based upon Customer's actions or inactions resulting in a violation of the TCIA.

11.3 Indemnification Notification, Procedure. The Indemnified Party will promptly notify the Indemnifying Party in writing no later than sixty (60) days after receipt of such notification of a potential claim. The Indemnifying Party may assume sole control of the defense of such claim and all related settlement negotiations. The Indemnified Party will provide the assistance, information and authority necessary to assist the Indemnifying Party in its obligations. Neither party may settle any such matter without the consent of the other as to any settlement that imposes an obligation on, or requires any admission by, the other party. Failure of the Indemnified Party to promptly notify the other will not relieve the Indemnifying Party of its obligations except to the limited extent such delay prejudices the Indemnifying Party.

11.4 911 Call Limitation and Indemnification.

11.4.1 Neither 46 Labs nor its underlying carriers, or any other third parties involved in the routing, handling, delivery, or answering of emergency services or in responding to emergency calls, nor their officers or employees, may be held liable for any claim, damage, loss, fine, penalty or cost including, without limitation, attorneys' fees, and Customer hereby waives any and all such claims or causes of action, arising from or relating to the provision of all types of emergency services to Customer.

11.4.2 Customer further indemnifies and holds 46 Labs harmless from any claim or action for any caller placing such a 911 call without regard to whether the caller is an employee of the Customer. Customer holds harmless and indemnifies 46 Labs from any claim or action arising out of mis-routes of any 911 calls, or whether local emergency response centers or national emergency calling centers answer a 911 call or how the 911 calls are handled by any emergency operator, including operators of the national call center. These limitations apply to all claims regardless of whether they are based on breach of contract, breach of warranty, product liability, tort or any other theories of liability.

## **12 Limitations on Liability.**

12.1 Underlying Carriers. 46 Labs is not liable for any act or omission by any other company or companies furnishing a portion of the Services to Customer.

12.2 Limitation of 46 Labs Liability for Direct Damages. 46 Labs' liability to Customer for any damage, including but not limited to property damage to Customer premises, service outages or problems, and personal injury, shall in no event be greater than an amount equal to the sum of the payments made by Customer to 46 Labs during the three (3) months immediately preceding the event for which losses or damages are claimed. By entering into an Agreement and remaining a Customer, Customer manifests its acceptance of this limitation on direct damages as fair and reasonable.

- 12.3 Indirect or Consequential Damages. Neither 46 Labs nor Customer shall be liable to the other for any indirect, incidental, exemplary, punitive or consequential damages, whether or not foreseeable, including, but not limited to, damages from the loss of data, business goodwill or profits, savings or revenue, harm to business, whether under contract, tort, including negligence, strict liability or any other theory of liability. A party's out-of-pocket costs for damages recovered by a third party shall be deemed to be indirect damages suffered by such party, except to the extent such damages are part of a claim for which indemnification is due under Section 11.
- 12.4 Service Interruptions. 46 Labs' sole liability under this Agreement for interruption of Service or failure of equipment shall be limited to that amount of 46 Labs' actual fixed fees incurred by Customer during the period of such interruption for all services provided. 46 Labs shall not be liable for any interruption caused by the negligence or willful act or omission of Customer or any third party furnishing any portion of the Services. Customer's sole and exclusive remedy for any Service related claim will be set forth in service related SLA.
- 12.5 Delays. 46 Labs shall not be liable to Customer for losses or damages resulting from its inability to provide Service or from any delay in meeting a scheduled Start of Service Date or a scheduled change in the Start of Service Date.
- 12.6 Force Majeure Events. In no event shall either party have any claim or right against the other party for any failure of performance, except for 46 Labs' right to seek payment of all accrued fees, due to causes beyond that party's reasonable control, including, but not limited to: acts of God, earthquake, fire, explosion, vandalism, fiber optic cable cut, storm, flood or other similar catastrophes; any law, order, regulation, direction, action or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over either of the Parties or of any department, agency, commission, court, bureau, corporation, or other instrumentality of any one or more said governments, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; acts of terrorism; riots; wars; strikes; lock-outs, work stoppages or other labor difficulties; actions or inactions of third party providers or suppliers; or supplier failures, shortages, breaches or delays.
- 12.7 Facilities, Services, Equipment or Systems of Others. 46 Labs shall not be liable for the unavailability, or deficient performance, of any CPE, facilities, services, equipment or systems used in connection with the provision of Services that are under the control of Customer or any third party, even if 46 Labs has acted as the Customer's agent in procuring such facilities, services, equipment or systems from third parties. Customer's rights with regard to the unavailability or deficient performance of such facilities, services, equipment or systems not provided by 46 Labs shall be strictly as established by the supplying entity. In all instances, the Customer shall be responsible for the security of its facilities, services, network equipment or systems interconnected, with 46 Labs' Service. Customer shall be liable to 46 Labs for any loss, theft, or damage to any of 46 Labs' equipment located on Customer's premises, however caused.
- 12.8 Electronic Recording. 46 Labs expressly disclaims all liability with respect to Customer's recording or monitoring of telephone conversations. 46 Labs is not responsible for any

misinterpretation, lack of understanding or lack of knowledge regarding the use of electronic recordings or monitoring conversations or the use of its products by Customer whether legal or illegal. Customer shall hold 46 Labs harmless and indemnify 46 Labs from all damages, liabilities or potential liabilities arising from or related to Customer's unlawful recording or monitoring of any telephone conversation using 46 Labs' service.

- 12.9 Customer's Failure to Fulfill Obligations. 46 Labs shall not be liable to Customer or any third party for Customer's failure to fulfill its obligations, including, without limitation, Customer: (a) obtaining, installing and maintaining all necessary equipment, materials, and supplies for interconnecting Customer or third party facilities, services, equipment or systems to Services; (b) securing all licenses, permits, approvals, rights-of-way, access rights, including ingress and egress from buildings, and other arrangements necessary to install, receive and use Services; (c) ensuring that Customer or third-party facilities, services, equipment or systems interface properly with Services; (d) that the signals delivered to 46 Labs' Service are fully compliant with industry standards and that such signals do not damage 46 Labs property or personnel, or degrade Service to other Customers of 46 Labs; and (e) Customer use of non-approved Services.
- 12.10 Misuse of Service. 46 Labs shall neither provide credit allowances nor otherwise be liable for the use, misuse or abuse of Services by Customer, its agents, employees or any third parties including, without limitation, members of the public. If 46 Labs co-operates with Customer by recommending potential solutions to reduce or eliminate the unauthorized use of the Service, 46 Labs' recommendation shall not be deemed to be promises or guarantees by 46 Labs that the unauthorized use of Services will be reduced or eliminated, and in no event shall 46 Labs incur any liability in connection with those undertakings to Customer or any third party.
- 12.11 Billing Errors. 46 Labs' obligation with respect to any errors resulting in Customer overpayments for Service is limited to granting invoice credits equal to the dollar amounts erroneously billed. Under no circumstances will any billing error affect the Customer's obligation to pay for Services rendered and used.
- 12.12 Third Party. Customer is solely responsible for its interaction and relationship with any third-party provider that it may engage for any purpose. If Customer has a dispute with a third-party service provider, Customer agrees that 46 Labs is not liable for any claims or damages arising out of or connected with such dispute. 46 Labs reserves the right, but has no obligation, to monitor any such dispute.

### **13 Term, Termination, Notice.**

- 13.1 Term. The Term of the Agreement shall commence on the Start of Service Date and shall continue for the initial Service Order Term as set forth in the Customer's initial SO. After such initial term, the Agreement shall automatically renew for successive one (1) year terms unless terminated in writing by 46 Labs or by Customer via mail pursuant to this Agreement. This Agreement shall terminate only upon the completion or termination of all associated SOs. At the sole discretion of 46 Labs, an individual SO may be terminated without terminating the Agreement.
- 13.2 Termination. 46 Labs may elect in its sole discretion to terminate this Agreement and any outstanding SO(s) immediately for any reason enumerated under Section 3.4. 46 Labs



may terminate this Agreement or any SOs, at its option upon providing Customer with written notice of such election. In such event, the effective date of the termination shall be thirty (30) days from the date of such notice. 46 Labs shall not be liable to Customer or any third party for any reason for terminating or suspending Customer's use of or access to the Services. Customer may cancel the Service by emailing 46 Labs at support@46labs.com, AND by giving written notice to 46 Labs as provided in Section 13.3, with the words "Attention: Service Disconnection Request" prominently written on the outside of the envelope or in the subject line of the email, no less than forty-five (45) days prior to the effective date of such cancellation. 46 Labs shall begin the disconnection process upon receipt of notification from the Customer. The disconnection process shall not begin until all toll-free numbers have been removed from the Customer's services. Charges shall continue until 46 Labs and any underlying carriers complete the disconnection process, or forty-five (45) days, whichever is later. 46 Labs recommends Customer ensures any replacement services are operational before requesting disconnection, as 46 Labs is not responsible for any interruption or failure of service once disconnection has been requested by Customer. Once disconnection has been requested, service may disconnect at any time after forty-five (45) days without prior notice to Customer.

- 13.3 Notice. All notices, demands, consents, requests, approvals, Customer name and address changes, billing inquiries and requests, authorizations, or other communication which Customer is required or desires to give or make to 46 Labs shall be in writing and shall be effective (a) immediately upon hand delivery, (b) on the next business day if sent by a generally recognized overnight delivery service (subject to confirmation of receipt from the service), or (c) on the date received if sent by United States certified or registered mail, return receipt requested or email. Any faxed notice must be followed up with a written notice which is either hand-delivered; mailed either certified or registered mail; or delivered by a reputable overnight carrier, as per the above. Such Notices shall be sent to the address or fax number of 46 Labs as set forth below:

**By Mail to:**

46 Labs  
Attn: Legal  
1503 E. 19th St.  
Edmond, OK 73013

**By Fax to:**

46 Labs  
Attn: Legal  
1-405-340-1001

**By E-mail to:**

46 Labs  
[support@46labs.com](mailto:support@46labs.com)

Notices to Customer shall be sent to the email or billing mailing address on file in the 46 Labs billing system.

Rate change notices may be delivered by 46 Labs to Customer by email or facsimile and shall be deemed to be delivered when received by Customer.

## **14 Miscellaneous Provisions.**

- 14.1 Entire Agreement. This Agreement, including any associated SOs, any supplemental product terms and conditions, AUPs, PP, SLAs, and SSAs, shall constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersede all prior statements, agreements, discussions, proposals, representations or warranties, whether written or oral, on this subject matter, and there are no representations or promises which are not expressly set forth herein. No statement, representation or warranty made by any agent or representative of 46 Labs regarding the Services, facilities or equipment to be provided hereunder or the rates therefore shall be binding upon 46 Labs unless expressly included herein.
- 14.2 Compliance with Law. In conjunction with the Agreement, each Party shall at all times comply with all applicable federal, state, and local statutes, ordinances, regulations and orders of any commission or other government body.
- 14.3 Change of Contact Information. Customer acknowledges that it is Customer's sole responsibility to supply immediate notice to 46 Labs if Customer changes any of its contact information. If at any time Customer's name or billing information changes from that which is set forth below, Customer shall have five (5) days to inform 46 Labs of such changes in accordance with the notice provisions set forth in the Agreement.
- 14.4 Relationship of Parties. Neither the Agreement nor the provision of Service hereunder shall be deemed to create any joint venture, partnership or agency between 46 Labs and Customer; the Parties are independent contractors and shall not be deemed to have any other relationship. Neither Party, nor any agent or representative of either Party, shall have, or hold itself out as having the power or authority to bind or create liability for the other Party by its intentional or negligent act and no claimed act of authority shall have any binding effect.
- 14.5 Amendment. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement, and associated documents or agreements, may not be modified or amended other than by a document that expressly states its intention to modify this Agreement, and such document is signed by hand in ink or by commercially recognized electronic signature service by both Parties.
- 14.6 Service Order, Signatures. 46 Labs shall not be bound by the terms of the Agreement, any associated SO, SLA, SSA or AUP or any supplemental document or agreement of any kind, unless the Agreement and associated SOs are signed by hand in ink or by commercially recognized electronic signature service by an officer of the Customer.
- 14.7 Survivability. Sections 2, 7, 8, 9, 10, 12, 14.8 and 14.9 shall survive the completion of those performances and the Agreement's termination. These include, without limitation, the making of payments due under the Agreement.
- 14.8 Governing Law, Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma without reference to its principles of conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods ("CISG") shall not apply. Customer and 46 Labs both hereby irrevocably agree that any suit brought by either Party arising out of or relating to this Agreement shall be brought exclusively in the United States District Court for the Western District of Oklahoma, and Customer and 46 Labs both hereby submit to the personal jurisdiction of

such courts. The Parties both hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which either Party may raise now, or hereafter have to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. THE PARTIES HEREBY EXPRESSLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY A PARTY AGAINST THE OTHER PARTY RELATING TO THIS AGREEMENT. In the event an action is brought or an attorney is retained by either Party to enforce the terms of this Agreement or to collect any money due hereunder, the prevailing Party will be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorney's fees, court costs, reasonable costs of investigation and other related expenses incurred in connection therewith.

- 14.9 No Waiver. Neither 46 Labs' nor the Customer's failure, at any time, to enforce any right or remedy of the Agreement will be interpreted as a waiver of such Party's right to enforce each and every provision of the Agreement in the future. No waiver of any provision of this Agreement, or any rights or obligations of either Party under this Agreement, shall be effective, except pursuant to a written instrument signed by the Parties waiving compliance, and any such waiver shall be effective only in that specific instance and for the specific purpose stated in such writing.
- 14.10 Severability. In the event any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid, illegal or unenforceable by a court with jurisdiction over the Parties to this Agreement, such provision shall be deemed to be restated to reflect as nearly as possible the original intention of the Parties in accordance with the applicable law, and the remainder of this Agreement shall remain in full force and effect. The illegality or unenforceability of any provision of this Agreement does not affect the legality or enforceability of any other provision or portion of this Agreement.
- 14.11 Assignment. 46 Labs may assign in whole or in part its rights or duties under the Agreement without prior notice to Customer and upon such assignment 46 Labs shall be released from all liability hereunder. Customer may assign the Agreement only with 46 Labs' prior written consent. Subject to these restrictions, the Agreement shall inure to the benefit of and be binding upon the heirs, successors, subcontractors, and assigns of the respective Parties.
- 14.12 No Third-Party Beneficiaries. Except to the extent explicitly provided, this Agreement and any associated SO is being executed for the sole and exclusive benefit of 46 Labs and Customer and is not for the benefit of any third parties. The execution of the Agreement and any associated SO shall not create any obligations or confirm any rights on any person or entity other than the Parties hereto.
- 14.13 Interpretation. Neither this Agreement nor any SO may be construed or interpreted for or against 46 Labs because 46 Labs drafted any of its provisions.
- 14.14 Headings. Headings contained herein are provided for reference and convenience only. Headings do not affect or limit the interpretation, contents or terms of this Agreement.
- 14.15 Execution in Counterparts and by Facsimile. The Parties hereby acknowledge that any document requiring a signature under this Agreement may be executed in two or more

counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. The Parties intend that any counterpart copy signed and exchanged (including signed counterparts exchanged via facsimile or email) shall be fully binding as an original handwritten executed copy and all such copies together shall constitute one instrument.